

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CAROLYN BURKS,

No. C06-05211 MJJ

Plaintiff,

**ORDER DISMISSING CASE**

v.

JOHN E POTTER,

Defendant.

Before the Court is Plaintiff Carolyn Burks' ("Plaintiff") inadequate response to the Court's Order to Show Cause. (Docket No. 8.)

In order to bring suit against the United States or its agencies, Plaintiff must comply with Federal Rule of Civil Procedure 4(i). This rule provides that service must be effected "by delivering a copy of the summons and of the complaint to the United States Attorney for the district in which the action is brought" or to a designated assistant United States attorney or clerical employee, or by sending a copy of the summons and complaint to the civil process clerk at the United States attorney's office by registered or certified mail. FED. R. CIV. P. 4(i)(1)(A). Plaintiff must also send a copy of the summons and complaint to the Attorney General of the United States in Washington D.C. by registered or certified mail. *Id.* at 4(i)(1)(B). Finally, where an employee or agency of the United States is sued, Plaintiff must send a copy of the summons and complaint to the employee or agency by registered or certified mail. *Id.* at 4(i)(2)(A). Service must be made within 120 days after the complaint is filed. *Id.* at 4(m).


1 On November 11, 2006, this Court issued an Order to Show Cause why Plaintiff's claims  
2 should not be dismissed for failure to prosecute, pursuant to Federal Rule of Civil Procedure Rule  
3 41(b). (Docket No. 3.) On November 30, 2007, Plaintiff filed a response with the Court, explaining  
4 that service was executed on the Attorney General and the Postmaster General. Plaintiff, however,  
5 only filed proof that service was executed on the Postmaster General.

6 On October 22, 2007 the Court issued a second Order to Show Cause why Plaintiff's claims  
7 should not be dismissed for failure to prosecute. The Court noted that Plaintiff had not submitted the  
8 appropriate proof of service as required by Federal Rule of Civil Procedure 4(i).

9 On November 5, 2007, Plaintiff submitted a timely response to the Court's Order. While  
10 Plaintiff asserted that service was executed on the Attorney General and the Postmaster General,  
11 Plaintiff did not attach proof of such service. (See Docket No. 7.) Plaintiff also did not assert, much  
12 less offer proof, that service was executed on the United States Attorney for the district in which the  
13 action was brought. See Fed. R. Civ. P. 4(i)(1)(A). The Court therefore **ORDERS** this case  
14 dismissed for failure to prosecute. The Clerk of the Court is directed to close the file and vacate all  
15 future dates.

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17 **IT IS SO ORDERED.**

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20 Dated: November 19, 2007

  
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MARTIN J. JENKINS  
UNITED STATES DISTRICT JUDGE